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In the Supreme Court of the United States

October Term, 1955

No. 352

DAVID S. ALBERTS,

Appellant,

vs.

STATE OF CALIFORNIA,

Appellee.

Appellee's Statement Opposing Jurisdiction, and Motion to Dismiss or Affirm.

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IN THE

Supreme Court of the United States

October Term, 1955

No. 852

DAVID S. ALBERTS,

Appellant,

vs.

STATE OF CALIFORNIA,

Appellee.

Appellee's Statement Opposing Jurisdiction, and Motion to Dismiss or Affirm.

Comes now the People of the State of California, appellee, and moves to dismiss or affirm the above appeal and respectfully presents the following matters in support of the motion, and opposing jurisdiction of this Honorable Court, asserted by appellant, upon the following grounds:

1. That the appeal herein does not present a substantial federal question and the judgments rest on an adequate non-federal basis.

2. That it is manifest from the record that the questions on which the cause depends are so unsubstantial as not to need further argument. (U. S. C. A., Title 28, Rule 16 (1955 Pocket Supp.))

Statement of Case.

A complaint was filed in the trial court charging the appellant in Count I with violating Subdivision 3 of Section 311 of the California Penal Code, *i. e.*, selling or keeping for sale obscene and indecent books. In Count II appellant was charged with violating Subdivision 4 of the same code section, *i. e.*, advertising such books. He was tried, found guilty and placed on probation. He appealed and the California Appellate Court affirmed his convictions. [Jur. Stat. pp. 1-2, and Ex. A.]

Statute Involved.

The California Penal Code, Section 311, Subdivisions 3 and 4 provides:

"Every person who wilfully and lewdly, either:

. . .

"3. Writes, composes, stereotypes, prints, publishes, sells, distributes, keeps for sale, or exhibits any obscene or indecent writing, paper, or book; or designs, copies, draws, engraves, paints, or otherwise prepares any obscene or indecent picture or print; or molds, cuts, casts, or otherwise makes any obscene or indecent figure; or,

"4. Writes, composes, or publishes any notice or advertisement of any such writing, paper, book, picture, print or figure; . . . is guilty of a misdemeanor." [Jur. Stat. pp. 3-4.]

Constitutional Questions Presented.

The appellant states:

"This appeal presents the following questions under the Constitution of the United States:

"(1) Whether the statute in the instant case, Penal Code, Section 311, Subdivisions 3 and 4, upon its face

and as construed and applied, and the prosecution thereunder at bar, violates procedural and substantive due process of law and denies and/or abridges freedom of speech, press and thought, in contravention of the due process clause of the Fourteenth Amendment and the freedom of speech and press clauses of the First Amendment of the United States Constitution.

"(2) Whether the statute in the instant case, Penal Code, Section 311, Subdivisions 3 and 4, as applied here to the mailing of circulars and the keeping of books for sale by mail is repugnant to Article I, Section 8, Clause 7 of the United States Constitution and unlawfully infringes on a sphere of activity reserved exclusively to the federal government respecting which the federal government has fully legislated, preempting the field." [Jur. Stat. pp. 4-5.]

I.

Appellee's Answer to Appellant's Contention.

The California Penal Code Section Here in Question, Does Not, on Its Face and as Construed and Applied to Appellant in the Instant Case Violate Freedom of Speech and Press, nor Does Said Code Section or the Decision of the California Court, Conflict With Any Federal Law or Decision, nor Does the Code Section and Its Application Deny Appellant Substantive and Procedural Due Process of Law. [Jur. Stat. p. 9.]

It appears that appellant's first attack on the code section is that:

"THE STATUTORY STANDARD—PROSCRIBING 'OBSCENE AND INDECENT' LITERATURE— . . . . IS UNCONSTITUTIONALLY VAGUE AND UNCONFINED, AND A CENSORIAL PROSCRIPTION OF IDEAS AND SPEECH . . ." [Jur. Stat. p. 9.]

The terms used in Section 311 of the California Penal Code, under which the appellant was convicted, are similar to those used in Federal statutes prohibiting the mailing, selling, importing, transportation, or broadcasting of any matter that is obscene, lewd, lascivious, filthy, profane or of an indecent character. (18 U. S. C. A., Secs. 1461-1464.) This court has upheld the validity of these Federal statutes as not being unconstitutionally vague or indefinite. (*Rosen v. United States* (1896), 161 U. S. 29, 40, 165 S. Ct. 434, 40 L. Ed. 606; *United States v. Dennet* (1930), 39 F. 2d 564, 76 A. L. R. 1092; *Bonica v. Oleson* (1954), 126 Fed. Supp. 398; *United States v. Limehouse* (1932), 285 U. S. 424, 76 L. Ed. 843, and also Anno. 76 L. Ed. 845.)

It would, therefore, appear that if the standards set forth in the Federal statutes involving obscenity, are not unconstitutionally vague or indefinite, *a fortiori* a state statute which uses the same standards should also be held constitutional.

Appellant cites a series of cases starting at page 10 of his Jurisdictional Statement, twenty in number, purporting to illustrate the standard in this court as to vagueness in proscription or prohibition against expressions involving the principles of free speech, which he terms "comparable in principle and in substance to the characterization 'obscene,' or to the similar term at bar, 'indecent.'"

Of these, thirteen are licensing cases involving the principle of "prior restraint" as opposed to "subsequent punishment." As noted by this court in *Burstyn v. Wilson* (1951), *infra*, 343 U. S. 494, 96 L. Ed. 1099, which in discussing *Near v. Minnesota* (1931), 283 U. S. 697, 75 L. Ed. 1357, held that the major purpose of the First Amendment guarantee of a free press was to prevent prior restraint on publication.

Thus in the weighing of society's interest in free expression of opinion against its interest in the suppression of matters clearly within the police power, this court has found freedom of expression the more important, *so far as prior restraint is concerned.* The latter interest of society has been considered met by the answer that the publisher, who may not be previously restrained, publishes obscene matter and similar classes of material at his peril of prosecution and punishment *after the publication.*

In *Kunz v. New York,* 340 U. S. 290, 298, 95 L. Ed. 280 cited by appellant, which cites with approval and emphasizes the following quote from *Chaplinsky v. New Hampshire,* 315 U. S. 568, 571, 572, 86 L. Ed. 1031, 1035, it is stated:

> "There are certain well defined and narrowly limited classes of speech *the prevention and punishment* of which *have never been thought to raise any constitutional problem.* These include the lewd and obscene . . ." (Emphasis is that of the Supreme Court in the *Kunz* case.)

In the instant case no prior restraint is suggested. The obscene books were already published and were currently kept for sale and advertised for sale.

Of the remaining seven cases cited by appellant, one is *Winters v. New York,* which is fully discussed and distinguished *infra; Musser v. Utah,* 333 U. S. 95, 96, did not reverse the trial court, but remanded the case to the Supreme Court of the state for further clarification of the state statute, the only mention of the principle of free speech being in the dissenting opinion; *Thornhill v. Alabama,* 310 U. S. 88, 91-92, is concerned with a statute prohibiting the carrying of any sign for picketing; *Herndon v. Lowry,* 301 U. S. 242, 263-264, involved a Georgia

statute on subversive activity and in that regard too vaguely worded; *Stromberg v. California,* 283 U. S. 359, 369, involved the California "red flag" statute, and held it to be not sufficiently definite in its terms.

In other words, none of appellant's authorities are concerned with a statute dealing with subsequent punishment for publication of obscene or indecent matters (with the exception of the *Winters v. New York* case elsewhere herein distinguished), and therefore it is appellee's contention that none of the cited cases as presented in appellant's brief are decisive or controlling in the instant case.

Appellant relies upon *Holmby v. Vaughn* (1955), 350 U. S. 870 [Jur. Stat. p. 9] and states:

> "Although Holmby was without written opinion it is evident from the citation of the Burstyn and Superior Films cases its holding is that 'obscene' is an unconstitutionally vague standard violating freedom of speech." [Jur. Stat. p. 10.]

The *Burstyn* case (*Joseph Burstyn, Inc. v. Wilson* (1952), 343 U. S. 495, 72 S. Ct. 777, 96 L. Ed. 1098), involved the licensing of motion pictures "prior to their being shown." In that case this court stated:

> "The statute involved here does not seek to punish, as a past offense, speech or writing falling within the permissible scope of subsequent punishment. On the contrary, New York requires that permission to communicate ideas be obtained in advance from state officials who judge the contents of the words and pictures sought to be communicated. This court recognized many years ago that such a previous restraint is a form of infringement upon freedom of expression to be especially condemned. *Near v.*

Minnesota, 283 U. S. 697, 75 L. Ed. 1357 (1931). The court there recounted the history, which indicates that a major purpose of the First Amendment guarantee of a free press was to prevent prior restraints upon publication, although it was carefully pointed out that the liberty of the press is not limited to that protection. It was further stated that 'the protection even as to previous restraint is not absolutely unlimited.'"

The case of *Superior Films v. Department of Education*, 346 U. S. 585, 98 L. Ed. 329, also cited by the appellant, is to the same effect. None of these cases are applicable to the instant case. In this case there was no prior restraint but a conviction within the permissible scope of subsequent punishment.

The appellant futher relies upon the case of *Winters v New York* (1948), 333 U. S. 507, 92 L. Ed. 840. That case involved a conviction under a statute which made it an offense to publish or distribute publications "principally made up of criminal news, police reports or accounts of criminal deeds or pictures or stories of deeds or bloodshed, lust or crime" The court held that inasmuch as the term "obscenity" had never included these matters, the statute was unconstitutional as being vague, and not setting up a sufficiently definite standard of conduct. It appears that a correct interpretation of the *Winters* case is found in the case of *United States v. Hornick* (1955), 131 Fed. Supp. 603, wherein the court stated:

"In support of their (appellants') position they cite *Winters v. People of the State of New York* (1948), 333 U. S. 507, 68 S. Ct. 665, 92 L. Ed. 840. We have no quarrel here with that case. In fact, the meaning we get from it indicates that this motion is without merit. The Winters case classified

indefinite statutes into two categories: (1) 'permissible uncertainty'; and (2) 'unconstitutional vagueness.' Into the second category the Court placed the statute there under consideration. This forbade 'massing stories to incite crime.' *But into the first category the Court placed those statutes which dealt with 'obscene, lewd, lascivious, filthy, indecent or disgusting' words which are used in 'describing crimes' and which are 'well understood through long use in the criminal law . . .'* 333 U. S. at page 518, 68 S. Ct. at page 671. Therefore, we are constrained to hold that the statute in question, 18 U. S. C., Sec. 1461 (1952), is sufficiently definite to sustain an indictment based thereon." (Emphasis added.)

It is again submitted that in the instant case the appellants were convicted under a state statute which dealt with obscene matters, which were well understood and defined through long use in criminal law and that, therefore, the *Winters* decision would have no application herein.

In *Besig v. United States* (1953), 208 F. 2d 142, persuasive language pertinent to the question here presented is set forth. Among other things the court stated:

"The word 'obscene' is not uncommon and is used in English and American speech and writings as the word symbol for indecent, smutty, lewd or salacious reference to parts of the human or animal body or to their functions or to the excrement therefrom.

. . . . . .

"Whether the moral conventions should be flaunted in the cause of frankness, art, or realism, we have no occasion to decide. That question is for the policy branches of the government. Nor do we understand that we have the legal power to hold that the statute authorizing the seizure of obscene books is inap-

plicable to books in which obscenity is an integral part of a literary work. So that obscenity, though a part of a composition of high literary merit, is not excepted from operation of the statute, whether written in the style of the realists, surrealists, or plain shock writers. The civilization of our times holds to the premise that dirt in stark nakedness is not generally and at all times acceptable. And the great mass of the people still believe there is such a thing as decency. Indecency is easily recognizable.

. . . . . .

"We agree that the book as a book must be obscene to justify its libel and destruction, but neither the number of the 'objectionable' passages nor the proportion they bear to the whole book are controlling. If an incident, integrated with the theme or story of a book, is word-painted in such lurid and smutty or pornographic language that dirt appears as the primary purpose rather than the relation of a fact or adequate description of the incident the book itself is obscene."

See:

Burke v. Kingsley Books, Inc., et al., 142 N. Y. S. 2d 735.

In *Schindler v. United States* (1953), 208 F. 2d 289 at 291, it is stated:

"It is claimed that the booklet 'Arabian Love Manual' is not obscene under modern legal definitions of obscenity. We think otherwise. In our opinion the book is lewd and filthy by whatever standards one may appraise it. For a very recent discussion of the general subject of what constitutes obscene matter, see *Besig v. United States* (9 Cir.), 208 Fed. 2d 142."

The remark in the above case would appear to be equally applicable to the evidence shown in the matter presented in the instant case.

The opinion of the California Court in the instant case [App. A, to Jur. Stat.] is not in conflict with any federal cases and has correctly stated at pages 2 and 3 that:

> "The words 'obscene or indecent' as used in Subdivision 2 of Section 311, are not unconstitutionally indefinite. As early as 1896 the United States Supreme Court knew their meaning. *Swearingen v. U. S.* (1896), 161 U. S. 446, 451, 16 S. Ct. 562, 40 L. Ed. 765, 766, and a large number of cases since then have been decided on the theory that their meaning was not obscure. See Annotation, 76 A. L. R. 1099, and *People v. Wepplo* (1947), 78 Cal. App. 2d Supp. 959, 961. 178 P. 2d 853, 855. To be sure, it is not always easy to decide on which side of the line a book should be placed, but if a difficulty of that sort sufficed to condemn a statute, then we could not declare it to be a crime to drive while under the influence of liquor, or to induce a person to part with his property by a false pretense, or to kill with malice aforethought."

The elements of lewdness and obscenity under the accepted definitions of these terms are proper subjects of regulation and prohibition. (*People v. Babb* (1951), 103 Cal. App. 2d 326.)

2. Under Subdivision 2 of appellant's first contention, he states: "THIS CASE PRESENTS IN AN IMPORTANT RESPECT THE SAME QUESTION POSED IN BUTLER V. MICHIGAN, PROBABLE JURISDICTION NOTED THIS TERM." [Jur. Stat. p. 21.]

The basis for appellant's above contention is that the case of *People v. Wepplo* (1947), 78 Cal. App. 2d Supp.

959, so construed Section 311, Subdivision 3 of the California Penal Code, and,

> "Thus this case presents in an important respect virtually the identical question posed in the *Butler v. Michigan,* and should be considered with that case." [Jur. Stat. p. 23.]

There is no merit to appellant's contention. There is nothing in the *Wepplo* case, *supra,* or in any other California cases cited, that can be fairly construed as holding that:

> "The Michigan and California statutes, as interpreted are strikingly similar." [Jur. Stat. p. 21.]

In the *Wepplo* case, *supra,* the court set forth the pertinent provisions of Section 311, Subdivision 3 of the Penal Code and stated:

> "A book is obscene 'if it has a substantial tendency to deprave or corrupt its readers by inciting lascivious thoughts or arousing lustful desire.' (*Commonwealth v. Isenstadt* (1945), 318 Mass. 543 [62 N. E. 2d 840, 844]; see, also, *United States v. Dennet* (1930), 39 Fed. 2d 564, 568; *Dunlop v. United States* (1897), 165 U. S. 486, 501 [17 S. Ct. 375; 41 L. Ed. 799, 804].) The question whether any particular book is obscene or indecent is primarily one of fact, to be decided by the jury."

There appears to be no relationship between the decision in the case of *Butler v. Michigan* (cited by appellant) and the California cases. Appellant's attempt to include the California statute within the framework of the holding in the *Butler* case, *supra,* appears to be strained in an effort to gain jurisdiction by this court.

3. Under Subdivision 3 of appellant's first contention he states: "THE CONSTRUCTION AND APPLICATION OF THE STATUTE AT BAR, AND THE PROSECUTION CONDUCTED UNDER THE SAID STATUTE IN THE PROCEEDINGS BELOW, PARTICULARLY VIOLATE PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW, AND DENY AND ABRIDGE FREEDOM OF SPEECH, PRESS AND THOUGHT IN PARTICULAR AND AGGRAVATED MANNER, ALL IN CONTRAVENTION OF THE FIRST AND FOURTEENTH AMENDMENTS." [Jur. Stat. p. 23.]

In *Snyder v. Massachusetts* (1933), 291 U. S. 97 (54 S. Ct. 330, 78 L. Ed. 674, 90 A. L. R. 575) the following pertinent language appears:

> "A fertile source of perversion in constitutional theory is the tyranny of labels. Out of the vague precepts of the Fourteenth Amendment a court frames a rule which is general in form, though it has been wrought under the pressure of particular situations. Forthwith another situation is placed under the rule because it is fitted to the words, though related faintly, if at all to reasons that brought the rule into existence. (U. S. S. Ct. p. 114.)
>
> . . . . . .
>
> "Due process of law requires that the proceedings shall be fair, but fairness is a relative, not an absolute concept. It is fairness with reference to particular conditions or particular results. (U. S. S. Ct. p. 116.)
>
> . . . . . .
>
> "The law, as we have seen, is sedulous in maintaining for a defendant charged with crime whatever forms of procedure are of the essence of an opportunity to defend. Privileges so fundamental as to be inherent in every concept of a fair trial that could

> be acceptable to the thought of reasonable men will be kept inviolate and inviolable, however crushing may be the pressure of incriminating proof. But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true." (U. S. S. Ct., p. 122.)

The appellant admits that "The complaint was in the exact language of the statute" [Jur. Stat. p. 5] It is the law in California that a complaint charging a public offense in the language of the statute is sufficient. (*People v. Saffel* (1946), 74 Cal. App. 2d Supp. 967; *People v. Ryan* (1951), 101 Cal. App. 2d Supp. 927.) Further, the failure to demur to the complaint or move in arrest of judgment shall be deemed a waiver of the objections of the pleadings. (Secs. 1012, 1185, Pen. Code; *People v. Freudenberg* (1953), 121 Cal. App. 2d 564, 593.) Appellant was tried according to the procedural laws of California. Certain exhibits were introduced in evidence. [Jur. Stat. pp. 6-8.] The trial and appellate court found the appellant guilty of the offenses charged in Count I—keeping obscene books for sale, and Count II—advertising such books for sale. There was no denial of procedural due process.

Appellant's contention that the code section in question, "Abridges Freedom of Speech, Press and Thought" is without merit.

In *People v. Arnold* (1954), 127 Cal. App. 2d Supp. 844, 846-847, it is stated:

> "Freedom of speech and of the press implies the right freely to utter and publish whatever a citizen may please with immunity from legal censure and punishment for the publication so long as it is not

harmful in its character when tested by such standards as the law affords. (*People v. Osborne* (1936), 17 Cal. App. 2d Supp. 771, 778 [59 P. 2d 1083].)

"The chief purpose of the constitutional guarantee is to prevent prior restraint, but it is also a positive injunction against the curtailment of the right of expression, including circulation, after it is made. (*People v. Armentrout* (1931), 118 Cal. App. Supp. 761, 769 [1 P. 2d 556].)

"Neither of these freedoms is absolute, but each must be measured by the public welfare and limited by it. (*Chrisman v. Culinary Workers Local No. 62* (1941), 46 Cal. App. 2d 129, 132 [115 P. 2d 553].) Where the rights of others are interfered with, such rights may be protected under our laws and constitutions. (*People v. Northum* (1940), 41 Cal. App. 2d 284, 289 [106 P. 2d 433].) The guarantee of free speech does not carry with it freedom from responsibility for any abuse of that right. (*Werner v. Southern Calif. Assoc. Newspapers* (1950), 35 Cal. 2d 121, 124.)

. . . . . .

"Appellee's contention, therefore, in reality is a plea, not for liberty, but a plea for release from the responsibility of liberty.

"In *Near v. Minnesota, ex rel. Olson* (1931), 283 U. S. 697, 707 [51 S. Ct. 625, 628, 75 L. Ed. 1357, 1363], the court says: 'In maintaining this guaranty [liberty of the press and of speech], the authority of the State to enact laws to promote the health, safety, morals and general welfare of its people is necessarily admitted.'"

In *Besig v. United States* (1953), 208 F. 2d 142, 147, the court stated:

> "The point that the Constitutional guarantee of freedom of speech or of the printing press (or, we may add, of the radio and television), is violated, is without merit. The point is made and the only argument to sustain it is simply that the books, since they have some literary merit, are not obscene. We have decided otherwise."

See:

Burke v. Kingsley Books, Inc., et al., 142 N. Y. S. 2d 735.

II.

The Code Section in Question Does Not Infringe on Any Federal Law.

The appellant's second point is as follows:

> "THE STATUTE, PENAL CODE, SECTION 311, AS APPLIED HERE TO THE MAILING OF CIRCULARS AND THE KEEPING OF BOOKS FOR SALE BY MAIL IS REPUGNANT TO ARTICLE I, SECTION 8, CLAUSE 7 OF THE UNITED STATES CONSTITUTION AND UNLAWFULLY INFRINGES ON A SPHERE OF ACTIVITY BESERVED EXCLUSIVELY TO THE FEDERAL GOVERNMENT RESPECTING WHICH THE FEDERAL GOVERNMENT HAS FULLY LEGISLATED, PREEMPTING THE FIELD." [Jur. Stat. p. 25.]

In support of his contention, the appellant makes certain statements. First, he states that he was convicted of two counts on a complaint charging a violation of Section 311, Subdivisions 3 and 4 of the California Penal Code "making it a crime to advertise or keep for sale obscene books." [Jur. Stat. p. 2.]

Then in an effort to cloud the issues before this court, and to gain jurisdiction on an issue unsupported by the record, the appellant makes the following statements:

> "The judgment sought to be reviewed here is a *criminal conviction* in two counts under Section 311, Subdivisions 3 and 4 of the California Penal Code for the *keeping for sale by mail* and for *advertising by mail* 'obscene and indecent' books." [Jur. Stat. p. 5, emphasis added.]

> "*Appellant was convicted* under Count II . . . . *for mailing circulars* . . . and under Count I . . . for keeping in his warehouse *books to fill by mail orders received by mail*." [Jur. Stat. p. 8, emphasis added.]

> "Appellant was in the mail order business and was convicted because he *mailed* circulars advertising books which were held to be obscene and because he kept those books for sale *by mail*." [Jur. Stat. p. 25, emphasis added.]

The record does not support appellant's statement that he was convicted for using the United States mail to advertise or distribute his obscene wares.

The question here presented has been fully and correctly answered by the Appellate Court in its decision wherein it is stated:

> "The circumstance that the defendant made use of the United States mails to advertise and to distribute his obscene wares—and that some of his books were obscene we do not consider debatable—does not render the state statute, Section 311, inoperative. See *In re Phoedovius* (1918), 177 Cal. 238, 246, 170 P. 412; *Zinn v. State* (1908), 88 Ark. 273, 114 S. W.

227, 228; *Ex parte Williams* (1940), 345 Mo. 1121, 139 S. W. 2d 485, 491, which cites *In re Phoedovius, supra*, certiorari denied in U. S. Supreme Court, *Williams v. Golden*, 311 U. S. 675, 61 S. Ct. 42; 85 L. Ed. 434; *Railway Mail Association v. Corsi* (1945), 326 U. S. 88, 95, 65 S. Ct. 1483, 89 L. Ed. 2072, 2077." [Jur. Stat. App. A, p. 3.]

The fact that Congress has power to punish a person for sending obscene matter through the mail does not prevent the state from passing a law to punish a person for violating Section 311 of the Penal Code—keeping and advertising obscene matter for sale, etc. (*People v. McDonnell* (1889), 80 Cal. 285; *People v. Grosofsky* (1946), 73 Cal. App. 2d 15.) Section 311 does not infringe upon or conflict with any federal statute or the constitution and said code section covers an area in which the federal statutes have no application. Furthermore, the same act may constitute an offense equally against the United States and the state. (*Pettibone v. United States*, 148 U. S. 197, 37 L. Ed. 419, 13 S. Ct. 542; *State v. Moore*, 143 Iowa 240, 121 N. W. 1052; 15 Am. Jur. p. 68; *Cross v. North Carolina*, 132 U. S. 131, 33 L. Ed. 287, 10 S. Ct. 47.) The instant case is not a contest for jurisdiction over the person between the federal and state court. (*People v. Branch* (1955), 134 Cal. App. 2d 572.)

III.

There Is Nothing in the Jurisdictional Statement, or the Opinion of the Appellate Court [Jur. Stat. Ex. A] That Presents a Substantial Federal Question.

The Appellate Department of the Superior Court of Los Angeles County in its opinion, among other things stated:

> "We see no good purpose to be served by a discussion of either the evidence, which we find sufficient to support the judgment, or of the other contentions advanced." [*People v. Alberts* (1955), 138 A. C. A. 513, 515. See also opinion on denial of a rehearing *Id.*, pp. 515-516. Jur. Stat. Ex. A, pp. 4-5.]

The opinion of the highest court of the state did not discuss every feature of the case and may have rested upon a non-federal ground. When it appears that the judgment "might" have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment, when the question of the existence of an adequate state ground is debatable. (*Stembridge v. Georgia* (1952), 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834.)

Conclusion.

For the foregoing reasons there is no substantial federal question presented. The code section in question is not vague or ambiguous nor does said section deprive appellant of Freedom of Speech or the Press, nor was he denied due process of law, nor does the code section conflict with or infringe upon any federal statute or the Constitution.

Appellee believes that appellant has failed to present to this Honorable Court a substantial federal question and, therefore, appellee moves that the appeal herein be dismissed, or the convictions appealed be affirmed.

Respectfully submitted,

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